

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<b>HARRY T. COLLINS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. 05-624-SLR</b>
	)	
<b>WARDEN RAPHAEL WILLIAMS,</b>	)	<b>JURY TRIAL DEMANDED</b>
<b>et al.</b>	)	
	)	
<b>Defendants.</b>	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	

**ANSWER OF DEFENDANT, CORRECTIONAL MEDICAL SERVICES, INC.,  
(INCORRECTLY DESIGNATED AS "CORRECTIONAL MEDICAL  
SYSTEMS"), TO PLAINTIFF'S "AMENDED COMPLAINT" WITH  
AFFIRMATIVE DEFENSES**

Plaintiff's "Amended Complaint", (D. I. # 62) does not contain numbered paragraphs with distinct allegations, but rather consists of multiple un-numbered paragraphs that contain narrative statements, which do not permit an orderly, concise admission or denial of specific facts or contentions.

Subject to the above, the statements in plaintiff's "Amended Complaint", to the extent that they allege factual matters, are denied. Furthermore, defendant Correctional Medical Services, Inc., denies any violation of plaintiff's civil rights, denies any deprivation of adequate medical care, denies any violation of 42 U. S. C. § 1983, denies any violations of the Eighth Amendment, denies any negligence or medical malpractice

and denies that any conduct on its part proximately caused any injury or harm to the plaintiff.

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff was not deprived of any civil or constitutional rights or protection by Answering Defendant, Correctional Medical Services, Inc.

**THIRD AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc. at all times material to plaintiff's Amended Complaint acted in good faith and with the reasonable belief, both objective and subjective, that their actions were lawful and not in violation of the rights of plaintiff under the Constitution and laws of the United States and/or the State of Delaware.

**FOURTH AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc. at all times material to plaintiff's Amended Complaint was not in violation of plaintiff's rights under the United States Constitution, Delaware Constitution or the laws of the United States or the laws of the State of Delaware.

**FIFTH AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc., was not deliberately indifferent to any of plaintiff's alleged serious medical needs.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims do not rise to the level of deprivation of civil or constitutional rights.

**SEVENTH AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc., did not recklessly, maliciously, willfully, or intentionally commit any wrongful acts or omissions causing injury to the plaintiff and, in the absence of such conduct, there can be no liability on the part of Answering Defendant on the facts of this case.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff received appropriate and competent medical care and treatment during his period of incarceration from Answering Defendant, Correctional Medical Services, Inc.

**NINTH AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc., is entitled to the defense of good faith immunity.

**TENTH AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc. is otherwise entitled to the defense of immunity and/or qualified immunity.

**ELEVENTH AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc., is not responsible for persons, events, circumstances or conditions reasonably beyond its control.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred or limited by the provisions contained in the United States Civil Rights Act.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to exhaust administrative remedies, including but limited to remedies pursuant to 42 U.S.C. § 1997a(e).

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims may otherwise be barred by 28 U.S.C.A § 1915

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims may be barred and/or reduced by the plaintiff's own contributory or comparative negligence.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The plaintiff's injuries, if any, resulted from an intervening and/or superseding cause.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitation and/or statutorily mandated administrative time limitation period.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged conditions did not constitute a serious medical need.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiff failed to comply with the mandates of 18 Del. C. § 6853.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiff failed to mitigate his alleged injuries and damages.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc., had no policy or custom demonstrating deliberate indifference to plaintiff's alleged serious medical need.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Answering Defendant, Correctional Medical Services, Inc., had no personal involvement in any alleged wrong.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

As to any claims sounding in state law, Answering Defendant, Correctional Medical Services, Inc., is immune from liability under the State Tort Claims Act, 10 Del. C. §4001, *et seq.*

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

The doctrine of respondeat superior or vicarious liability is not a basis for liability in an action under 42 U.S.C. § 1983 against Answering Defendant, Correctional Medical Services, Inc.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's injuries were caused, in whole or in part, and/or exacerbated by a pre-existing condition which existed prior to the date of any alleged wrongful conduct by Answering Defendant, Correctional Medical Services, Inc.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's own conduct proximately caused and/or exacerbated his injuries, if any.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Insufficiency of process and/or service of process.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

Lack of jurisdiction over the person and subject matter.

WHEREFORE, defendant, Correctional Medical Services, Inc., demands that plaintiff's Amended Complaint be dismissed with prejudice and that judgment be entered in favor of defendant, Correctional Medical Services, Inc., and against plaintiff, together

with reasonable attorneys fees, costs and such other relief as the Court may deem appropriate.

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

BY: /s/ Kevin J. Connors

KEVIN J. CONNORS, ESQ.

DE Bar ID: 2135

1220 North Market Street, 5<sup>th</sup> Fl.

P.O. Box 8888

Wilmington, DE 19899-8888

Attorney for Defendant,

Correctional Medical Services, Inc.

(incorrectly designated as

"Correctional Medical Systems")

DATED: August 20, 2007

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